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SERVICE DATE - MAY 23, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-534 (Sub-No. 2X)

LAKE STATE RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
ALPENA AND PRESQUE ISLE COUNTIES, MI

Decided: May 20, 2003

On May 22, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for the Michigan Department of Natural Resources (MIDNR) to negotiate an interim trail use/rail banking agreement with Lake State Railway Company (Lake State) for a portion of Lake State's Huron Subdivision (the main line) extending northward from the U.S. Highway 23 crossing in Alpena (milepost 125.2) to the end of the main line just north of Metz, MI (milepost 151.25), and Lake State's entire Rogers City Branch extending northward from a point on the main line at Posen, MI (milepost 141.8), to Rogers City, MI, ending at RCB milepost 11.5, a distance of 37.55 miles, in Alpena and Presque Isle Counties, MI. The negotiating period under the NITU was extended by decisions served on November 17, 2000, May 4, 2001, December 18, 2001, May 17, 2002, and November 8, 2002. The latest extension expired on May 7, 2003.

By letter filed on May 7, 2003, Lake State requests an additional 180-day extension of the NITU negotiating period but seeks to exclude from the NITU the portion of the right-of-way extending from milepost 6.7 to milepost 11.5 at the end of the Rogers City Branch.<sup>1</sup> According to Lake State, it is continuing negotiations with MIDNR and expects to complete an agreement within 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, except for the portion of the Rogers City Branch between milepost 6.7 to milepost 11.5, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v.

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<sup>1</sup> In a letter filed on May 13, 2003, Lake State clarified the mileposts for the property to be excluded from the NITU, which is located within the quarry of Michigan Limestone Operations in Presque Isle County.

<sup>2</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days from May 7, 2003, except for the portion of the right-of-way on the Rogers City Branch extending from milepost 6.7 to milepost 11.5, which Lake State may fully abandon, subject to the conditions imposed in the May 22, 2000 decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Lake State's request to extend the NITU negotiating period is granted for the portion of Lake State's Huron Subdivision extending northward from the U.S. Highway 23 crossing in Alpena (milepost 125.2) to the end of the main line just north of Metz, MI (milepost 151.25), and Lake State's Rogers City Branch extending northward from a point on the main line at Posen, MI (milepost 141.8), to Rogers City, MI, ending at milepost 6.7.

2. The NITU negotiating period for the portion of the line described above is extended until November 3, 2003. Lake State may fully abandon the portion of the right-of-way on the Rogers City Branch from milepost 6.7 to milepost 11.5, subject to meeting the conditions imposed in the May 22, 2000 decision.

3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary